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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6350 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : YES

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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ASHWIN C INAMDAR

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 6350 of 1986

Ms. Sangeeta N. Pahwa for MR PM THAKKAR for Petitioner No. 1-2

Ms. D.S. Pandit, AGP for Respondent No. 1-3

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 05/07/2002

ORAL JUDGEMENT

Heard learned advocate Ms. Sangeeta Pahwa for Mr.P.M. Thakkar for the petitioner and Ms. D.S. Pandit,

the learned Asstt. G.P. for the respondent authorities. In this petition, the petitioner has challenged the vires of section 2(oo) of the Industrial Disputes Act, 1947 as per the prayer clause 13(a) of the memo of petition.

Today when the matter has come up for hearing, learned advocate Ms. Pahwa appearing for the petitioner has submitted that the petitioner is not pressing for the said relief. In view of the said statement made by Ms. Pahwa, the matter was taken up by this court for final hearing. Brief facts of the present petition are to the effect that both the petitioners have been working as a clerk cum typist with the respondent no.2; that the petitioner no.1 is working continuously since 1.11.1985 while petitioner no.2 is working continuously since 3.9.1985; that the petitioner no.1 was appointed vide appointment letter dated 18/29.10.1985. Similar order was issued for petitioner no.2. It is the case of the petitioners that they were appointed through employment exchange of Nadiad; that their names were duly forwarded to the hospital authorities by the employment exchange; that the petitioners were selected by a duly constituted selection committee consisting of respondent No.2, Chief Physio Therapist of Paraplegia Hospital and the Senior Administrative Officer of Paraplegia Hospital. It is the case of the petitioners that many candidates were considered for selection while the petitioners were amongst those who were declared successful and were issued the orders of appointment; that they have continuously served since the above mentioned dates and have never been issued any charge sheet, show cause notice or any adverse remarks throughout their career till the date of the present petition; that their service career is spotless and they have always worked hard. That both the petitioners are belonging to Other Backward Class enumerated by the Baxi Commission. That the petitioner no.2 is physically handicapped and is having serious walking defect in the left leg due to some permanent damage to the calf muscle since his birth. According to the petitioners, in view of the above, they are entitled to be treated as permanent employees and the respondents are not entitled to treat them as employees appointed merely for 29 days and, therefore, the respondents are also not entitled to terminate their services on that basis. It is their case that they have worked on all the working days but have been issued series of appointment orders for a duration of 29 days but in reality, they have worked on the 30th day also but are given merely a paper break. The petitioners have specifically submitted that the muster rolls will also reflect this fact clearly. The petitioners have further

submitted that since they were duly selected by a properly constituted selection committee, there is no logical reason to remove them from service. According to the petitioners, on many occasions, they were even issued the appointment orders much after the date of paper break and in such cases, the appointments were treated as retrospective by the authorities. The last orders dated 15.12.1986 are also similar orders. Thus, according to the petitioner, whole arrangement of these appointment orders is nothing but a paper arrangement and in reality, they are being treated as continuing in employment. According to the petitioners, they were not given any retrenchment compensation on the evening of 15.12.1986 and they were told that they will have to hand over charge on the next day and should come for completing these formalities on 16.12.1986. Therefore, apprehending the termination of their services, they have filed the present petition before this Court. This Court has, while issuing notice pending admission on 16.12.1986, has granted ad.interim relief in terms of para 13(f) of the petition and, thus, the petitioners were protected. Thereafter, this Court has, by order dated 24.12.1986, admitted this petition by issuing rule thereon and has ordered to continue the ad.interim relief. In view of these facts, in para 13(b) of the petition, the petitioners have made a prayer to set aside the purported action of respondent authority in seeking to terminate the services of the petitioner on the ground that it is violative of section 25-F of the Industrial Disputes Act, 1947 and it amounts to unfair labour practice, hit by Art. 14 and 16 Constitution of India. The petitioners have also prayed for restraining the respondents from terminating their services and to direct the respondent authorities to regularize their services.

The respondents have filed affidavit in reply on 30th December, 1986, by one Govind N. Parmar, Senior Admn. Officer. The deponent in the affidavit in reply, has not disputed the facts narrated by the petitioner in the petition as regards date of appointment, periodical appointments and the date of termination i.e. 15th December,1986; that the petitioners have not received order of termination from the respondents and prior to that, both the petitioners approached this court by way of this petition and obtained interim orders on 16th December, 1986. In the reply filed by respondent NO.2, the only contention raised by respondent No.2 is that they were appointed on periodical basis from time to time and ultimately, their services were terminated on 15th December, 1986. It has been denied that the artificial breaks were given as alleged. It has been contended that

the post in questions are required to be filled in through Centralized Recruitment Scheme ("CRS" for short) by the Collector and therefore, the petitioners are not entitled to continue in service. Except that, there is no other averments made in the affidavit in reply filed by respondent NO.2.

During the pendency of the present petition, one civil application No. 7354 of 1998 was filed by the present petitioners before this court alongwith which, one letter dated 11th July, 1996 was annexed at page 5 of the said civil application. It is a letter written by the Director, Paraplegia Hospital, Ahmedabad to the Additional Director, Medical Education and Research, Gujarat State, Gandhinagar wherein it is stated by the Director of Paraplegia Hospital, Ahmedabad that two posts of Junior Clerk cum Typists are lying vacant since long. It is also stated that since the work load of the institution has been increased, it is essential to fill up the posts immediately. Hence, the Collector, Ahmedabad has been requested to allot candidates for the said post vide said office letter dated 1.3.1983.However,the Collector informed his inability to allot the candidates for want of availability of candidates. It has also been stated in the said letter that in the mean time, Shri M.N. Pandya a paraplegic who is working as junior clerk at the said hospital has been appointed to the post of social worker by the government as a special case and, hence, one more post became vacant. It has been stated that therefore, administrative work of the institution was affected badly and, therefore, names from the employment exchange office were invited for the above posts. The Employment Exchange Officer Nadiad sponsored names of eight candidates. It has also been stated that the selection committee comprising Class I & II Officers of the said institute selected (1) Shri B.B.Barot and (2) Shri A.C.Inamdar for the above posts. Thereafter, Shri Barot and Inamdar were appointed as Jr. Clerk cum Typist on ad.hoc basis from 1.9.1985 and 1.11.1985 respectively. It has also been stated in the said letter that due to the work load of the institution, above two candidates' ad.hoc appointment was continued upto 15.12.1986 and thereafter on 15.12.1986, both of them were relieved from their posts. Thereafter, it has been submitted in the said letter that both the above candidates i.e. petitioners before this court filed the present petition before this court wherein interim relief has been granted in their favour and it has been stated that the matter is pending before the High court and it is presumed that it will take still more time to finalize the case by the

Court. In the said letter, it has been stated thereafter that both the candidates are fulfilling the recruitment rules and also falls under SE/BC candidates; both candidates are good in their work and the concerned authorities have been contacted for pre service training but they have been informed that immediate action will be taken for pre service training after they are regularized on their posts. It has been also stated in the said letter that during this period, both the candidates have gained about ten years' experience on the post; Mr. Barot is a handicap person; there is no objection if both the appointments of both the candidates are regularized and it has been recommended in the said letter for regularizing their appointments of the said two candidates. Thus, as per the letter dated 11.7.1996, Director of Paraplegia Hospital, Ahmedabad has made recommendation to the Director of Medical Education and Research Gandhinagar for regularization of the petitioners before this Court. Again, by letter dated 2.5.1997, addressed to the Additional Director, Medical Education and Research, Gujarat State, Gandhinagar by the Director, Paraplegia Hospital, New Civil Hospital Compound, Ahmedabad, similar request has been made by the Director of Paraplegia Hospital, Ahmedabad that both the employees are entitled for regularization in service as their service record is good; both are having requisite qualification under the Rules for the posts in question and both the petitioners are from Socially and Economically Backward Community and Mr. Barot is physically handicapped employee. Copy of the said letter has been annexed to the Civil Application No. 11354 of 1999 as Annexure III which was filed by the petitioners.

Ms. Pahwa, learned advocate for the petitioners has submitted that till this date, no decision has been taken by the Additional Director, Medical Education and Research, Gujarat State, Gandhinagar and both the petitioners are working on the posts in question on ad.hoc basis but they are not getting the benefits which are given to the permanent and regularized employees.

Learned A.G.P. Ms. Pandit has submitted that the fact remains that the petitioners have been continued in service with effect from 16th December, 1986. She has further submitted that because of the interim relief granted by this Court, order of termination has not been effected by the respondents on 16th December, 1986. She has further submitted that by aforesaid two letters, addressed to the Additional Director, Medical Education and Research, Gujarat State, Gandhinagar by the Director, Paraplegia Hospital, New Civil Hospital Compound,

Ahmedabad, request has been made by the Director of Paraplegia Hospital Ahmedabad for regularizing the services of the petitioners but no decision has so far been taken. In view of these facts, she has submitted that the Additional Director of Medical Education and Research, Gujarat State, Gandhinagar is required to be suitably directed to take appropriate decision in the matter after considering the recommendation made by the Director of Paraplegia Hospital, Ahmedabad.

Ms. Pahwa, learned advocate for the petitioners has submitted that both the petitioners have completed ten years and yet they are working on ad.hoc basis without getting benefits of permanency and regularization of their services and, therefore, some suitable directions are required to be issued to the concerned authority. According to her, it is also necessary to direct respondent No.2 that they may not terminate the services of the petitioners now because more than ten years have gone; they are having requisite qualification under the Rules and their services are found satisfactory by the concerned Director.

I have considered the submissions made by both the learned advocates for the parties. Both the petitioners were appointed after calling the names from the concerned employment exchange office; their names were sponsored by the concerned employment exchange office; they were interviewed by duly constituted committee and after following this process, ultimately, they were appointed on ad.hoc basis. Ultimately, in view of the interim order dated 16th December, 1986, both the petitioners are continued in service till this date. It is also an admitted fact that both the petitioners are from SEBC Class and one of the petitioners is handicapped person and they are working to the satisfaction of the Director, Paraplegia Hospital, Ahmedabad who has made recommendation to the Additional Director of Medical Education and Research, Gujarat State Gandhinagar for regularization of their services. That the respondent is not able to justify the action of termination. No such averments have been made in reply by the respondents. The respondent is also not able to satisfy as to why the decision of termination of service of the petitioners has been taken. Both the petitioners are working on vacant posts which are vacant till this date. No reasons have been given by the respondents for terminating the services of the petitioners. Therefore, such decision to terminate the services of the petitioners dated 15.12.1986 is arbitrary and hit by Article 14 and 16 of the Constitution of India. In view of these undisputed

facts, now, there is no question of terminating their services as they have completed more than ten years' service and their work is found satisfactory and they are fulfilling requisite qualification for the posts in question. According to my opinion, in view of these undisputed facts, since the petitioners are appointed after following due process of law, now, there is no scope to terminate their services as three posts are found to be vacant as per letter dated 11th July, 1996 and the Collector has not forwarded any names of any candidate for the post in question and therefore three posts are found to be vacant. In view of these facts and circumstances of the case, according to my opinion, some suitable directions are required to be issued to the Additional Director, Medical Education and Research, Gujarat State, Gandhinagar to consider the case of the petitioners for regularization as per the aforesaid two letters and not to terminate the services of the petitioners as well as to quash and set aside the decision dated 15.12.1986 to terminate the services of the petitioners.

Therefore, considering these facts and circumstances of the case, the decision of the respondents dated 15.12.86 to terminate the services of the petitioners is hereby quashed and set aside and it is directed to the respondents not to terminate the services of the petitioner and they are also directed to continue the petitioners in service. It is further directed to Additional Director, Medical Education and Research, Gujarat State, Gandhinagar to consider the recommendation made by the Director, Paraplegia Hospital, New Civil Hospital Compound, Ahmedabad by letter dated 11th July,1996 and 2nd May, 1997 and also consider the decision of the Apex Court in case of Gujarat Agricultural University versus Rathod Labhu Bechar, reported in AIR 2001 SC 706 and to pass appropriate orders in accordance with law to regularize the services of the petitioners and to grant all the service benefits as permanent employees of the institution within three months from the date of receipt of copy of this order. Rule is made absolute in terms indicated hereinabove with no order as to costs.

Dt. 5.7.2002. (H.K. Rathod,J.)
Vyas